

Application No: W 14 / 0397

Town/Parish Council: Leamington Spa
Case Officer: Rob Young

01926 456535 rob.young@warwickdc.gov.uk

Registration Date: 21/03/14

Expiry Date: 16/05/14

Unit 2, Regent Court, Livery Street, Leamington Spa, CV32 4NG

Change of use of land in front of the unit to an outdoor seating area associated with the permitted restaurant use FOR NewRiver Retail

This application is reported to Committee because it has previously been agreed that further applications for outdoor seating at Regent Court will be presented to Committee.

RECOMMENDATION

Planning Committee are recommended to GRANT planning permission, subject to conditions and subject to the satisfactory resolution of the issues raised by Environmental Health.

This recommendation is subject to change if the Environmental Health issues are not satisfactorily resolved before Committee.

DETAILS OF THE DEVELOPMENT

The application proposes the change of use of land in front of the unit to an outdoor seating area associated with the permitted restaurant use. This relates to an area of 25.7 sq m and would provide space for 28 covers.

The application was accompanied by a Noise Report and an Operational Management Schedule.

To allow for an external seating area it is also necessary to vary condition 6 of planning permission no. W13/1578. This is dealt with by a variation of condition application that is the subject of another item on this agenda (W14/0430).

There are also further applications currently under consideration in relation to the creation of an external seating area outside Unit 6 (Refs. W14/0437 & W14/0438). These are the subject of other items on this agenda.

THE SITE AND ITS LOCATION

The application relates to a shop unit on the southern side of Livery Street. The site is situated within the retail area of Leamington Town Centre and within the Leamington Spa Conservation Area. There are flats on the upper floors of the building and on the upper floors of the building opposite.

The unit has planning permission for a change of use to a restaurant (Use Class A3). Livery Street is pedestrianised and some of the other units along the street have external seating areas to the front, including Strada, Nandos, Bar Angeli and Starbucks.

PLANNING HISTORY

In 2002 planning permission was granted for "Change of use and conversion of Regent Hotel at basement and ground level (in parts) for Class A1 or A3 purposes with continued use of upper floors for hotel purposes. Erection of a new mixed development of 132 flats with ground floor Class A1 or A3 units and a basement car park for 131 vehicles accessed off Regent Grove. The scheme included alterations and extensions to Listed Buildings within the site including the demolition of rear wings to the Regent Hotel, No. 90 Regent Street and 31 Regent Grove, the demolition of non-listed buildings within the site, and the creation of a new street linking Regent Street and Parade, all as shown on the submitted plans" (Ref. W01/0483).

In May 2013 planning permission was granted for the creation of an outdoor seating area outside Nandos (Ref. W13/0350). This was a one year temporary permission to enable the effects of the use to be assessed before considering a permanent permission.

In July 2013 planning permission was granted for "Removal of condition 17 of planning permission W01/0483 (condition 17 restricts the total amount of A3 (restaurant and cafe) floorspace within the units fronting Livery Street and Regent Street to no more than 1,115 sq m)" (Ref. W13/0528). This permission was granted on the understanding that planning permission would still be required for the change of use of individual units.

In December 2013 planning permission was granted for the change of use of Unit 11 from retail (Use Class A1) to a restaurant (Use Class A3) (Ref. W13/1339).

In February 2014, planning permission was granted for "Change of use of ground floor retail units (Use Class A1) to cafes / restaurants (Use Class A3) (known as units SU1C, SU2A, SU3A, SU3B, SU4, SU5, SU6, SU7A, SU7B, SU8, SU12); shopfront alterations; public realm works; and alterations to highway land at the Regent Street entrance" (Ref. W13/1578). This authorised the change of use of the unit that is the subject of the current application to a restaurant. This permission was subject to various conditions, including a prohibition on the creation of outdoor seating areas (condition 6). It was intended that future occupiers would submit applications for external seating areas on an individual basis if they wish to pursue this option (as in the current case).

RELEVANT POLICIES

- DP1 - Layout and Design (Warwick District Local Plan 1996 - 2011)
- DP2 - Amenity (Warwick District Local Plan 1996 - 2011)
- DP9 - Pollution Control (Warwick District Local Plan 1996 - 2011)

- DAP8 - Protection of Conservation Areas (Warwick District Local Plan 1996 - 2011)
- DAP9 - Unlisted Buildings in Conservation Areas (Warwick District Local Plan 1996 - 2011)
- National Planning Policy Framework

SUMMARY OF REPRESENTATIONS

Town Council: Comments awaited.

Public response: 1 neighbour has objected on the following grounds:

- increased noise and disturbance;
- the noise is especially bad at closing time;
- outdoor seating areas will exacerbate existing noise issues; and
- the acoustics of the street just amplify and reverberate any noise.

The consultation period is ongoing and any further comments will be included in the addendum report to Committee.

WDC Environmental Health: Object on grounds of noise. Raise concerns about the methodology of the noise report and consider that this provides little evidence to demonstrate that the proposed outdoor seating area will not have an adverse impact on residential properties overlooking the Regent Court development. Noise from patrons on the street associated with the existing A3 use has been witnessed by Environmental Health as being intrusive in adjacent flats. Given the potential number of patrons within the existing and proposed external seating areas along Livery Street, the cumulative noise impact would be significant. The proposed mitigation measures will not adequately mitigate customer noise.

ASSESSMENT

The main issues relevant to the consideration of this application are as follows:

- the impact on the living conditions of nearby dwellings; and
- the impact on the character and appearance of the Conservation Area.

Impact on the living conditions of nearby dwellings

There are residential properties in close proximity to the proposed external seating area, on the upper floors of the application property and on the opposite side of Livery Street. Residents have raised concerns about potential noise from the outdoor seating area and have highlighted existing issues with noise from the seating area outside the Nandos premises. There has also been an objection from Environmental Health.

The applicant has proposed a number of measures to mitigate any noise impact, including the provision of an acoustically absorbent canopy and the

implementation of an Operational Management Schedule which will include measures for dealing with any noise issues. The canopy and Operational Management Schedule are covered by conditions on the planning permission for the change of use of the unit to a restaurant (Ref. W13/1578). Therefore it is not necessary to repeat these on any planning permission for an external seating area associated with the restaurant.

Previous planning permissions for the Regent Court development have restricted the hours of use of any external seating areas to 2230 hours. Given the concerns of residents and the potential cumulative impact of additional outdoor seating areas, the applicant has agreed that a more restrictive condition would be appropriate if planning permission is granted for the current proposals. The applicant has proposed to limit the hours of use of the seating area to between 0930 hours and 2130 hours.

One particular noisy activity that has been highlighted by residents is the dragging of tables and chairs inside the premises at closing time. In order to address this issue the applicant has agreed that any external tables and chairs will not be moved except during the permitted hours of use for the outdoor seating area. Conditions are recommended to deal with all of the restrictions that have been agreed.

In considering the impact of the proposals, it is important to have regard to the fact that the provision of an external seating area would enhance the vitality and viability of the town centre. This is a benefit of the proposed change of use that must be weighed in the balance. Furthermore, whilst the provision of an external seating area would impact on nearby residents, it is important to bear in mind that the proposals relate to a busy commercial street at the heart of the town centre. Furthermore, Livery Street contains a number of established restaurants and cafes that are open in the evening and most of these premises have external seating areas, including Strada, Nandos, Bar Angeli and Starbucks.

Notwithstanding the above points, there does remain the objection from Environmental Health. It should be noted that, in making their comments, Environmental Health have a narrow remit which only requires them to consider the impact on the living conditions of the residents. In contrast, when determining a planning application, the Planning Committee must weigh all of the relevant issues in the balance, including the economic benefits of the proposals and the need to support a vibrant and thriving town centre. In this context, discussions are ongoing with the applicant and Environmental Health to seek to reach agreement on a package of restrictions and mitigation measures that will reduce the impact to an acceptable level, when balanced against the benefits of the scheme. Further information on this matter will be provided in the addendum report to Committee.

Impact on the character and appearance of the Conservation Area

It is considered that the proposals would have an acceptable impact on the character and appearance of the Conservation Area. In reaching this conclusion it is noted that this is a modern shopping street within the Conservation Area

where outdoor seating areas are an established feature of the street scene. The physical features defining the external seating area (e.g. the canopy and planters) have already been approved under planning permission no. W13/1578.

SUMMARY / CONCLUSION

Subject to the resolution of the issues raised by Environmental Health, the proposals would have an acceptable impact on the living conditions of neighbouring dwellings and on the character and appearance of the Conservation Area. Therefore it is recommended that planning permission is granted. This recommendation is subject to change if the Environmental Health issues are not satisfactorily resolved before Committee.

CONDITIONS

- 1 The development hereby permitted shall begin not later than three years from the date of this permission. **REASON:** To comply with Section 91 of the Town and Country Planning Act 1990 (as amended).
 - 2 The development hereby permitted shall relate strictly to the details shown on the site location plan and approved drawing(s) 0132, and specification contained therein, submitted on 20 March 2014. **REASON:** For the avoidance of doubt and to secure a satisfactory form of development in accordance with Policies DP1, DP2 and DAP8 of the Warwick District Local Plan 1996-2011.
 - 3 No customers shall be permitted to use the external seating area before 0930 hours or after 2130 hours on any day. No furniture within the external seating area shall be moved before 0930 hours or after 2130 hours on any day. Any part of any furniture that is in contact with the ground shall be fitted with rubber stoppers to minimise noise.
REASON: To ensure that any external seating areas are not used at a time which would be likely to cause nuisance or disturbance to nearby residents in accordance with Policies DP2 & DP9 of the Warwick District Local Plan 1996-2011.
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